

The record in this case consists of documents filed of record with the Division of Workers Compensation, in this docket number and in docket number 183,424, including transcripts of preliminary hearings held on May 27, 1993; October 14, 1993; February 4, 1994; and June 22, 1994, before Administrative Law Judge James R. Ward, and the exhibits attached thereto.

### ISSUES

This is an Application for Review filed by the claimant from an Order of Administrative Law Judge James R. Ward, dated July 1, 1994, denying claimant's Application for Penalties. The sole issue raised by the claimant in his Application for Review is whether the Administrative Law Judge erred in not awarding penalties pursuant to K.S.A. 44-512a.

### FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the evidentiary record, the Appeals Board makes the following findings of fact and conclusions of law:

As to the question of jurisdiction, the Appeals Board finds it has jurisdiction to hear this particular appeal as the appeal is from a final order, not a preliminary hearing order. An award of penalties, pursuant to K.S.A. 44-512a, is not a preliminary award. It is a separate proceeding and is subject to de novo review on the record as a final order on written request made within ten (10) days from entry of the order. See Stout v. Stixon Petroleum, 17 Kan. App. 2d 195, 836 P.2d 1185, rev. denied 251 Kan. 942 (1992).

This case came before the Administrative Law Judge on a request for penalties pursuant to K.S.A. 44-512a filed by the claimant. After a preliminary hearing was held on June 22, 1994, the Administrative Law Judge, in an Order dated July 1, 1994, denied claimant's request for penalties. In this Order, the Administrative Law Judge made no findings nor did his Order contain his rationale for denying the penalty request.

This case is somewhat confusing because it involves two separate docket numbers with two separate dates of accidents. The first docket number is 168,876, date of accident May 19, 1991; the second docket number is 183,424, date of accident July 6, 1993. The claimant suffered a severe work-related accidental injury which occurred on May 19, 1991. After extensive medical treatment, he finally returned to light duty for the respondent, re-injured his back on July 6, 1993, and has not returned to work since that date.

A total of four (4) preliminary hearings have been held and four (4) preliminary hearing orders have been issued in both of these docketed cases. The one previous preliminary hearing order that is of relevance in deciding this particular appeal is dated May 27, 1993. This Order provides, among other things, for medical treatment to be provided by the respondent and its insurance carrier, with S. J. Farr, D.C. and James McMechan, M.D., until further order. Respondent was also ordered to pay medical mileage and pay to Dr. Farr a medical bill in the amount of \$625.00.

In the claimant's request for penalties, he claims that Dr. Farr's medical bill has not been paid in the amount of \$625.00 as ordered May 27, 1993, by the Administrative Law Judge. The claimant also claims additional visits have not been paid through April 11, 1994, for a total amount of unpaid medical bills to Dr. Farr of \$697.00.

The Preliminary Hearing transcript, dated June 22, 1994, which is concerned with this appeal, is designated as docket numbers 168,876 and 183,424. The Order denying the penalties is only designated as docket number 168,876. In the Preliminary Hearing transcript, dated June 22, 1994, the claimant has attached his Exhibit No. 4 which contains two statements from Dr. Farr, one for \$625.00 which itemizes treatments the claimant

received from January 4, 1993 through May 26, 1993, and another statement for claimant's treatments from October 10, 1993 through February 15, 1994, in the amount of \$589.00. These statements show two payments made by the respondent's insurance carrier to Dr. Farr, both received on October 25, 1993, in the total amount of \$225.00.

Whether the claimant is entitled to a civil penalty for unpaid medical bills is controlled by K.S.A. 44-512a(a). This statute requires a written demand to be served on the respondent or its insurance carrier when compensation, including medical compensation, which has been awarded, is not paid and is past due. If payment of such demand is thereafter refused or is not made within twenty (20) days, a civil penalty shall be paid. (Emphasis supplied.)

The Administrative Law Judge, when he denied penalties, did not make findings that would indicate why penalties were not granted as requested by the claimant. It would seem that the evidence in the record established that the respondent and its insurance carrier only paid \$225.00 of Dr. Farr's medical bill of \$625.00, which was ordered to be paid in the Administrative Law Judge's Order dated May 27, 1993. Accordingly, \$400.00 of this ordered medical bill remains past due. Whether the additional \$72.00 demanded by the claimant for visits through April 11, 1994, is past due, depends on whether Dr. Farr remained an authorized treating physician after the second injury date of July 6, 1993. However, the Appeals Board, from the Administrative Law Judge's Order, is unable to ascertain why the Administrative Law Judge did not assess a civil penalty as required by statute for the respondent's failure to pay in full Dr. Farr's medical bill in the amount of \$625.00. Additionally, the Appeals Board is unable to ascertain whether the additional \$72.00 is past due, as there is a question whether or not Dr. Farr was an authorized treating physician after the date of the second accident of July 6, 1993. Also, if this Application for Penalties only involves docket number 168,876 and does not involve docket number 183,424, then the claimant's request for penalties can only pertain to Dr. Farr's medical bills for treatment prior to the second injury of July 6, 1993.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that this case is hereby remanded to Administrative Law Judge James R. Ward, with directions to make specific findings that address the foregoing questions and that support his decision.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of December, 1994.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c: John J. Bryan, Topeka, Ks

Marcia Gearheart, Kansas City, MO  
Mark Works, Topeka, KS  
James R. Ward, Administrative Law Judge  
George Gomez, Director